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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 248/2004

May 22, 2007

T.D.DUJARI ..... Petitioner
Through Mr. R.K. Handoo, Mr. Rajnish M. Singh, Mr.Shivam Sharma, Advocates

versus

M.R.CHANDER ENFORCEMENT OFFICE ..... Respondent
Through Ms. Renu Bansal, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat (Open Court)

1. This revision petition is directed against an order framing charges made by the Additional Chief Metropolitan Magistrate dated 31.1.2004.

2. Briefly, the petitioner was accused of having contravened Section 40 of the Foreign Exchange Regulation Act (FERA); as he did not answer the summons issued on five different dates, namely, 10.3.1997 (requiring his presence on 12.3.1997), 13.3.1997 (for appearance on 20.3.1997), 29.3.1997 (for appearance on 31.3.1997), 15.4.1997 (for appearance on 17.4.97) and 17.4.1997 (for appearance on 22.4.97). The trial court proceeded to framing charges of the petitioner having contravened Sections 40/56. The

order has been challenged primarily on the ground that none of the summons was in fact received by the petitioner accused.

3. Learned counsel Mr. Handoo submitted that summons could not be treated as having been served in view of the Rule 10 of the Foreign Exchange Adjudication Appeal Rules, 1974 framed under FERA. According to its provisions, notice is deemed to have been served by delivering or tendering it on the person concerned or his duly authorised agents or by sending it to him by registered post with acknowledgment due or in absence of either modes, by affixation. Learned counsel contended that the complaint nowhere disclosed that the summons were ever received by the petitioner.

4. Mr. Handoo, highlighted paragraphs 2 to 6 of the complaint and submitted that the specific case alleged was that either Mr. D.P. Mukherjee, (an employee of the petitioner had acknowledged the summons) or that the same were received by his son but at no stage did the complainant/respondent, Enforcement Officer aver stated that the petitioner had received the summons. Thus, the basic ingredients of the offence had not been made out much less averred. It was further submitted by placing reliance on a letter dated 21.3.1997 by the Assistant Director, Enforcement Directorate, New Delhi written to the Assistant Director at Calcutta that in fact the summons were sent by "FAX" for proper service. It was submitted that these clearly establish that the mandate was for service on the accused petitioner and not anyone-else.

5. Learned counsel contended that the complainant nowhere made out a case of summons being served upon duly authorised representatives of the petitioner. He also took me through the copy of the deposition of the complainant.

6. The trial court proceeded to frame the charges as it did, after noticing the contentions and specific plea that the 1974 rules were applicable. It formed the opinion that under the rules, the summons/notices could be served through duly authorised agents.

7. The complaint in this case, as mentioned in paras 2,3,4, indicated that summons were issued on various dates. In regard to the second summons, there is a specific averment that it was received/acknowledged by the petitioner's son on 14.3.1997. The respondent complainant has placed reliance on Ex. PW-1/4A. That acknowledgment stated that the summons was indeed received on behalf of the petitioner. The copy of another acknowledgment said to have been received by the petitioner's daughter-in-law was produced as Ex. PW-1/5. That is also a matter of record. The question, therefore, is whether this could be considered proper for the purpose of service under Sections 40 and 56 of the FERA.

8. Learned counsel for the petitioner had relied upon judgments of various courts reported as *Delhi Development Authority vs. H.C. Khurana,* AIR 1993 SC 1488 and *K.A. Abdul Khader vs. The Deputy Director of Enforcement Information Directorate, Madras*, AIR 1976 Mad. 233 and submitted that unless summons or notice was served in accordance with the prescribed mode, the offence stipulated under Section 40/56 cannot be said to have been established warranting framing of charges. It was further submitted that the mere issuance of a notice in the absence of any material to indicate it is service would not justify a charge. It was contended on the basis of the cross examination of the complainant PW-1 that the petitioner had complied with the demand and had appeared before the Enforcement Officer at Calcutta.

9. The materials on record show that on five different occasions, the petitioner was issued with summons. There is no denial about that fact that at least two of them were received by close relatives. It is also not denied that another notice was received by his employee who wrote on his behalf that the petitioner is out of station and the petitioner would be informed on return. Therefore, I am of the opinion that at the stage of framing charges, the course of action adopted by the trial court cannot be termed as inappropriate or irregular. Prima facie these pointed to service of the summons at the place indicated. It is not the petitioner's case that the person who wrote back to the authorities was not empowered to do so on his behalf.

10. The enactment of Section 40, and consequent penal action under Section 56, FERA served an underlying public interest (when FERA was in force) in ensuring that all those called upon to co-operate in investigations, did so promptly, and with alacrity. Unless the default was for an acceptable reason, the investigating agency or prosecution would be justified in proceeding to lodge and press a complaint.

11. For the above reasons, there is no merit in the petition. However, nothing in this order shall be construed as a reflection on merits; all contentions and rights of parties are reserved.

S.RAVINDRA BHAT, J

MAY 22, 2007
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